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By: [ ]

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8 August 1956

MEMORANDUM FOR: Deputy Director (Support)

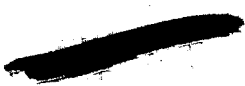
SUBJECT: Inspector General's Review of the General Counsel's Office

1. Paragraph 1 and paragraph 2 a. through c. (pp. 78-80) deal with the basic function and place in the Agency of the General Counsel's Office. No specific recommendation is made, but we agree with the theory stated and the conclusion that consideration should be given to attaching the General Counsel directly to the Office of the Director. The fact of specific identification with the purely administrative components of the Agency has, in some situations, been a limiting factor in the status of the office, although this is certainly not due to any lack of support and cooperation by the DD/S. We can, of course, continue to function in our present role but would, I believe, be more effective if recognized organizationally as counsel to the DCI. Further comment will be made in connection with the IG's recommendation on the legislative function.

2. Paragraph 2 d. through e. (pp. 81-82) leads to the recommendation that the General Counsel "discontinue non-legal activities such as rewriting regulations" and concentrate on interpretation of basic statutes and directives. I would welcome the opportunity to eliminate regulatory review and rewriting if I believed it practicable. In the last 10 years several attempts were made to produce regulations without us, but each time we have been drawn back because of the necessity of assuring that regulatory material be consistent with law and to help clarify the drafting. We hope, however, that new procedures in writing regulations will lessen considerably the non-legal aspects of our participation.

3. With regard to the Inspector General's thoughts on providing definitive interpretations on basic statutes and similar matters, it has been my philosophy to avoid legalistic approaches to substantive intelligence problems. To us the important matter is the basic statutory organization of the intelligence community and the place of the Director of Central Intelligence in government. We have repeatedly been involved in this fundamental and subtle problem, particularly in the drafting of such documents as NSCID's 1, 5, and 9 and DCID 5/1. We believe our legal analysis has been helpful but that the development should proceed on substantive rather than legalistic lines. While holding firmly to a basic concept, we believe it better to have it rest on a broad statutory framework which allows flexibility of action without relating such action to legal interpretations which may be hampering under changing conditions. The counterpart of this philosophy is shown in such agencies as AEC where legal interpretations on substantive matters, such as the definition of

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Restricted Data, have lived to plague the agencies involved and will require legislation to change. We have felt, ourselves, that the real lack is development of more literature on the law in intelligence, which would be expounding our philosophies and legal concepts for future reference. Much of this material is in our files in one place or another, but much is only in the heads of the senior lawyers. We have on detail with us at this time a young lawyer who is concentrating in this field.


4. Paragraph 3 (pp. 83-85) leads to the recommendation for rewriting regulations pertaining to tax matters. There may be merit in the rewriting as suggested, and we are studying the problem but feel that some separation may be more useful to the user than an attempt at one compilation. We are well aware, however, that considerable work remains to be done before our tax unit functions in the most effective manner. We will proceed with the recommendation to confer with the Director of Training to develop a more general education on tax matters.

5. The recommendation in paragraph 3 c. (p. 85) on the location of the office is soundly based but will probably not be satisfactorily resolved until we are in the new building.

6. Paragraphs 3 d., e., f., and g. (pp. 85-89) deal with the basic attitude of the General Counsel's Office in giving advice and opinions on legal matters affecting the Agency. It notes that in many areas this office is developing a reputation for saying "no" or for placing obstacles in the way of actions. Inevitably the time comes when lawyers have to point out that law or regulation prohibits or limits proposed actions. It is equally part of a lawyer's job to see problems that will or may arise to complicate or possibly bar a specific action. But I am in complete agreement with the IG that the true function of the lawyer is to assist in accomplishing the aims of his clients, and not only have I personally taken this as the function of this office but have repeatedly brought it out in staff meetings, personal briefings of new additions to the staff, and in formal and informal discussions with members of the staff. This is most easily demonstrated on the operational side as clandestine operations are fundamentally obnoxious to law, and some means must be found to avoid the impact of the multifarious laws, many of which are designed specifically to detect and prevent clandestine action. We have seldom been unable to devise a way of meeting the requirements of clandestine activities in the field of law.

7. It is on the administrative side that we probably have to express a negative approach most often. Even here though we can usually find some means to meet any reasonable request and take care of anything really necessary to the Agency's performance of its duties. The positive answers, however, are often in the form of simple concurrences or informal and even oral assents. When a negative position is taken we believe the

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reasons therefor should be fully expressed, and consequently a considerable portion of our published opinions and formal writings reach limiting or negative results. Even here though it is not usually any bar of law as such but is a bar raised by policies or regulations adopted by the Agency itself. We have helped in the formulation of many of these policies and regulations. In so doing our philosophy is that however desirable it would be to operate without regard to any other components of government, the facts are that we cannot operate in a vacuum and must be responsive to influences from other governmental entities at least to some extent.


8. Far from joining "other areas of the DD/S" in such concepts as "the law gives the Director the power but not the authority" to act in certain circumstances, we were probably the initial developers of this thesis. The full story of its development is too long to repeat here, but it is based on the theory that certain criteria must be established for the proper administration of any agency, and that due to the impact of other governmental instrumentalities on our basic administrative problems, those criteria should be based on normal governmental standards until there is good reason to depart therefrom. This philosophy has been raised with each successive Director and has by and large been adopted by each successive Director, often after powerful contrary opinion. We have concurred fully and sometimes led the way in departures from normal criteria where it appears thoroughly justified. We have recommended the retention of normal criteria where we see no such justification, but we repeatedly re-examine within the office, often with considerable healthy internal dissension, the retention of such criteria.

9. Our aim is to study each problem presented in the light of the over-all Agency interests for the long-term rather than the immediate result, and this inevitably brings us into conflict with persons eager to achieve the immediate goal. Where, however, the prohibition arises out of a policy or regulation put into effect by the Director, we make it a practice to point out that if the Director sees adequate reason for doing so, he, of course, may make exceptions or change the policy or regulation.

10. We feel that possibly more than any other staff we are in a position to be as objective as human nature permits, and we function, therefore, somewhat as a balance wheel over the long term. Thus in the days of the youth of the organization, of inexperience and rapid growth, we found ourselves on the side of limiting some desired actions, whereas now that the organization is becoming more and more tightly organized, we feel we have a mission to query additional regulations and to question when any tendency towards bureaucracy arises out of a feeling that law or regulation requires it.

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11. In one particular the IG Report states that if Logistics wants to develop simplified contractual procedures, the General Counsel should show how this can be done and not search for reasons why it is infeasible or unwise to do so. One of our main functions in connection with our review of contracts is to emphasize to the Logistics Officers involved that we have no legal requirement to follow the Armed Services' procurement regulations and similar normal governmental standards, and that simpler and more straightforward methods are not only within our authority but are in the best interests of the Agency.

12. The report on page 38 also implies that we have made no effort to have the Agency adopt suitable regulations under Regulation   regarding the Employment Review Board. This office had drafted and recommended the original Employment Review Board regulations which were adopted by the then Director and which were extensive and detailed. In 1954 the Director requested a modification, and we presented a new draft of regulations which we considered would meet his desires and still maintain the regulation framework which we felt proper for the Employment Review Board. This redraft was rejected by the Director's Office, and the present regulation was directed. In 1955 I asked a staff member to draft what he considered the ideal regulation from our point of view. During 1956 we have been reviewing with the Security Office what regulations might be advisable for the Employment Review Board. For several months we have been discussing with the Office of Security the type of regulation that might be presented to the Director's Office at an appropriate time. In view of the full discussion of the subject in November of 1954 and the flat rejection of our then proposed regulation, we have not deemed it appropriate to present new recommendations to the Director until such time as we can demonstrate the need therefor.


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13. In paragraph 4 (pp. 89-92) the IG asserts that there is a lack of clarity on the role played by the General Counsel's Office in the Agency, and on opinions published by this office, and recommends clarification. We have many times attempted to spell out in detail all of the functions this office may be required to perform from time to time. We repeatedly have come to the conclusion that the simple assignment of responsibility for all legal matters arising within the Agency is the most practical and understandable assignment and function.

14. As for our opinions, we are constantly, if informally, surveying their use, and with their original issuance we sent out a memorandum, dated April 22, 1955, which we believe clearly sets forth their nature and purpose. In spite of some original doubts on our part, we are not aware of any confusion or dissatisfaction in this regard. Incidentally we do not consider that these opinions are merely analyses of fact. There are laws of general

  
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applicability which must be interpreted and there are laws applying by reason of Agency policies which apply unless the Director sees fit to make exception to his own policy. Within the Agency, therefore, the opinions have the force and effect of law and to this extent have the same standing with the Comptroller and other offices as do opinions of other government legal authorities for the departments and agencies concerned. The one opinion mentioned by the IG, Number 55/6, 15 February 1955, is valid law within the Agency by virtue of Agency policy, but in that case, because of circumstances known to us, it specifically left room for the Director to make exception to the basic policy. This exception applies only to the case in question and leaves the statement of law binding.

15. In regard to the recommendation that we maintain up-to-date studies on all court opinions bearing on the Agency, this we believe we have done and kept up to date in the many fields involved.

16. In relation to the statements of the IG on page 92, we do not believe there is any question of the Veterans' Preference Act as a defense to separations under section 102(c) of the National Security Act of 1947. The one case mentioned by the IG was not a 102(c) case, and the withdrawal was for reasons other than the merits of the case as it came before the court. We feel our responsibilities keenly in this area and need no further inducement to keep ourselves prepared for the applicable law.

17. Paragraph 5 (pp. 92-94) questions the placing of responsibility for legislative liaison outside the General Counsel's Office. In theory there is considerable merit in the thought that the General Counsel should be responsible for legislative liaison, but theory must be consistent with practice, and this raises the question opened by the IG in the first part of his report that the General Counsel should be directly responsible to the Director. If this were so I believe the General Counsel could handle the legislative liaison satisfactorily, and it would be the logical place to assign that function. If, however, the General Counsel remains attached to the Office of the DD/S, I believe it would be preferable to have the legislative function stay where it is, or even better have Legislative Counsel a Special Assistant to the Director.

#### General Comment

I found the IG Report an interesting and thoughtful survey raising very basic questions. It is not surprising, therefore, that we continue to differ in some respects, and in so differing there is no question that I bear the personal responsibility, as this office, like any small law firm, probably reflects to a considerable degree the philosophies and

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practices of the senior partner. However, I would welcome further discussion of these and other points with the IG and his staff at any time.

Lawrence R. Houston  
General Counsel

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